## MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street Conference Room 308 Phoenix, Arizona 85007 Wednesday, October 8, 2014 – 1:00 p.m.

Present:

David M. Parker

Chairman (video conference)

Susan Strickler

Vice Chair (telephonic)

Michael G. Sanders

Member (telephonic)

Laura McGrory

Director

Andrew Wade

Chief Counsel

Sylvia Simpson Renee Pastor Chief Financial Officer Accounting Department

William Warren

ADOSH Director

Kara Dimas

Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present Commissioner Joseph M. Hennelly, Jr. was excused. Also in attendance were Jeff Homer of General Dynamics, and Jason Weber of Snell & Wilmer.

## Approval of Minutes of September 24, 2014 Regular Meeting.

The Commission unanimously approved the Minutes of the September 24, 2014 Regular Session on motion of Mr. Sanders, second of Ms. Strickler.

## Consent Agenda:

# a. <u>Approval of Proposed Civil Penalties Against Uninsured Employers.</u>

1.	2C13/14-0057	AZ Supreme Flooring, LLC

2. 2C13/14-0020 Cove Construction, LLC

3. 2C13/14-1549 D'Antonio's Signature Day Spa & Ink, LLC dba D'Antonio's Day Spa

4. 2C13/14-1122 Elderly Housing Care, Inc. dba Bedder Living

5. 2C13/14-2135 Limoport Transportation, L.L.C., dba Limoport Transportation

6. 2C13/14-0889 Morning Sun, LLC dba The Smokers Edge

7. 2C13/14-1474 Nancy McDade, a Single Woman, dba New Nortons Country Corner

8. 2C13/14-1067 The Donna Price Team, LLC dba Price Team Lending

9. 2C14/15-0104 Wayne Hansen Family Trust, dba I-15 Storage

# b. <u>Approval of Requests for Renewal of Self-Insurance Authority.</u>

- 1. Banner Health
- 2. Hyatt Corporation
- 3. Mayo Clinic

- 4. Medtronic, Inc.
- 5. Phoenix Newspapers, Inc.

Chairman Parker stated that agenda item 3. a. 8. would be removed from the consent agenda. The Commission unanimously approved the remaining items on the consent agenda on motion of Ms. Strickler, second of Mr. Sanders.

Andrew Wade advised that The Donna Price Team, LLC has obtained workers' compensation insurance and staff is recommending a civil penalty of \$500.00 instead of staff's previous recommendation of a \$1,000.00 civil penalty. The Commission unanimously assessed the recommended penalty of \$500.00 against The Donna Price Team, LLC on motion of Mr. Sanders, second of Ms. Strickler.

Discussion and/or Action regarding Residential Fall Protection and Federal OSHA's Notice of Initiation of Proceedings to Reject State Initiated Plan Change No. 133, and Reconsider Arizona's State Plan Authority under Section 18(e) of the Occupational Safety and Health Act. The Commission may move into Executive Session under A.R.S. §§ 38-431.03(A)(3) and (A)(4) to consult with its attorneys to obtain legal advice and to consider its position and instruct its attorneys regarding pending or contemplated litigation.

Mr. Wade stated there was nothing new to report at this time.

Discussion and Action and Potential Resolution regarding proposed rulemaking to A.C.C. R20-5-601 and A.A.C. R20-5-602 to adopt Federal Occupational Safety and Heath rule amendments related to cranes and derricks in construction, 29 CFR 1926, and electric power generation, transmission, and distribution in both construction, 29 CFR 1926, and general industry, 29 CFR 1910.

Ms. McGrory stated this was added to the agenda to correct typographical errors in the Resolution. She explained that the references to the standards, 1926 and 1910, were flipped referencing the opposite. This does not affect the action taken on September 24, 2014 and no motion was needed.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

Mega Metals, Inc.

1325 N. 22<sup>nd</sup> Avenue

Phoenix, AZ 85009 Site Location: Referral

Years in Business: Empl. Covered by Inspection: 29 10

1325 N. 22<sup>nd</sup> Avenue

Phoenix, AZ 85009

Inspection No: Inspection Date:

F3904-317695153

5/01/2014

<u>SERIOUS</u> – Citation 1 - Item 1 – East yard: Suitable fire extinguishing equipment was not maintained at the site for the type of combustible material present (titanium), as only ABC fire extinguishers were provided, and titanium fires require a type D fire extinguisher. (1910.252(a)(2)(ii)).

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

<u>SERIOUS</u> – Citation 1 - Item 2 – East yard: Members of Mega Metals, Inc. management did not designate precautions to be followed in granting authorization to Reliable Plant Maintenance employees to proceed with their work in the form of a written permit. (1910.252(a)(2)(iv)).

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

<u>SERIOUS</u> – Citation 1 - Item 3 – East yard: Mega Metals, Inc. management did not ensure that movable fire hazards (bales of titanium, wrapped in plastic and coated in cutting oil) were taken to a safe place and removed from the area where welding and cutting activities were being performed. (1910.252(a)(2)(xiii)). There was one other instance of this violation.

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

<u>SERIOUS</u> – Citation 1 - Item 4 – East yard: Mega Metals, Inc. did not establish an area for welding and cutting that was based on the fire potentials of the plant facility. (1910.252(a)(2)(xiii)(A)).

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

<u>SERIOUS</u> – Citation 1 - Item 5 – East yard: Mega Metals, Inc. did not advise all contractors (Reliable Plant Maintenance, LLC) about flammable and combustible materials (bales of titanium chips coated in cutting oil and wrapped in plastic) of which they might have not been aware when welding and cutting. (1910.252(a)(2)(xiii)(D)).

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

TOTAL PENALTY - \$10,000.00

TOTAL FORMULA AMT. - \$10,000.00

Mr. Warren noted that this matter and the next had previously been before the Commission and ADOSH was asked to perform further review. He stated that the review has been completed. He described an error in the previous descriptions on some of the mounted photos and explained how ADOSH had corrected the descriptions. Mr. Warren summarized the citation and proposed penalty for Mega Metals as listed and responded to questions from the Commissioners. Following discussion, Mr. Sanders moved to issue the citations with the recommended penalty and Ms. Strickler seconded the motion. Mr. Parker commented on how titanium in certain forms can be an extreme fire hazard and asked Mr. Warren to initiate a discussion with the Fire Department regarding mitigating future risks. The Commission unanimously voted in favor of the motion.

Reliable Plant Maintenance, LLC

PO Box 26229

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Unprogrammed Related Years in Business:

Empl. Covered by inspection:

3 2

Tempe, AZ 85285 Site Location:

1325 N. 22<sup>nd</sup> Avenue

Phoenix, AZ 85009

Inspection No:

F3904-317756047

Inspection Date:

5/15/2014

SERIOUS - Citation 1 - Item 1 - East yard Mega Me

<u>SERIOUS</u> – Citation 1 - Item 1 – East yard, Mega Metals facility: Sufficient guards were not placed between bales of titanium product and hot work being performed adjacent to those bales. (1910.252(a)(1)(ii)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

<u>SERIOUS</u> – Citation 1 - Item 2 – East yard, Mega Metals facility: Suitable fire extinguishing equipment was not maintained at the site for the type of combustible material present (titanium),

as only ABC fire extinguishers were provided, and titanium fires require a Type D fire extinguisher. (1910.252(a)(2)(ii)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

### SERIOUS - Citation 1 - Item 3

- a) East yard, Mega Metals facility: Reliable management (owner or foreman) did not designate precautions to be followed in granting authorization to their employees to proceed with their work in the form of a written permit. (1910.252(a)(2)(iv)).
- b) East yard, Mega Metals facility: Cutting or welding was permitted in areas near the storage of large quantities of exposed, readily ignitable bales of combustible titanium, wrapped in plastic and coated in cutting oil. (1910.252(a)(2)(vi)(D)).

  Div. Proposal \$1,500.00

  Formula Amt. \$1,500.00

<u>SERIOUS</u> – Citation 1 - Item 4 - East yard, Mega Metals facility: The employer (Reliable) did not ensure that the supervisor for the hot work being performed at Mega Metals, Inc. determined the combustible materials present. (1910.252(a)(2)(xiv)(B)).

Div. Proposal - \$1,500.00 TOTAL PENALTY - \$6,000.00 Formula Amt. - \$1,500.00

TOTAL FORMULA AMT. - \$6,000.00

Mr. Warren summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$6,000.00 on motion of Mr. Sanders, second of Ms. Strickler.

Pecos Employee Holding Corporation, Inc.

Planned

dba Archstone Care Center

Years in Business:

30 30

1980 W Pecos Rd

Empl. Covered by inspection:

Chandler, AZ 85224

Site Location:

1980 W Pecos Rd

Chandler, AZ 85224

Inspection No:

06169-317820249

Inspection Date:

7/30/2014

<u>SERIOUS</u> – Citation 1 - Item 1 – Maintenance Area: One employee utilized a RYOBI table saw (model BTS12S, Serial XX084066933), which was not guarded by an adjusting hood that completely enclosed the portion of the saw blade above the work. (1910.213(d)(1)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

#### SERIOUS – Citation 1 - Item 2 –

a) Boiler Room: Northwest Area: Flexible metal conduit installed between two electrical control boxes was not used in a continuous length to provide effective continuity. (1910.305(a)(1)(i)).

b) Boiler Room: Flexible metal conduit (FMC), used as outer insulation connecting a water heater to a junction box, lacked strain relief as the outer insulation of the supply cord pulled away from where the cord entered both the water heater and the junction box allowing tension to be transmitted to terminal screws and wire nuts. (1910.305(g)(2)(iii)). Div. Proposal - \$1,400.00 Formula Amt. - \$1,400.00

<u>SERIOUS</u> – Citation 1 - Item 3 – A written exposure control plan was not developed, implemented, and maintained for employees with potential exposure to bloodborne pathogens in the workplace. (1910.1030(c)(1)(i)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

TOTAL PENALTY - \$4,900.00

TOTAL FORMULA AMT. - \$4,900.00

Mr. Warren summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. Mr. Parker commented on the size of the nursing home/rehab facility, number of employees, and the program. Mr. Warren responded and stated that the employer has abated the violations. Mr. Parker asked about safe patient handling practices. Mr. Warren responded to the question. Mr. Parker commented on the penalty and noted that Mr. Warren could address that in his discussion with the employer. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$4,900.00 on motion of Ms. Strickler, second of Mr. Sanders.

S.Q.S. Family Foods, L.L.C.

Complaint

129 Maple Ave

Years in Business:

Empl. Covered by inspection:

7 3

Shrewsbury, MA 01545

3314 W Osborn Rd

Phoenix, AZ 85017

Inspection No:

Site Location:

R1538-317829380

Inspection Date:

8/18/2014

<u>SERIOUS</u> – Citation 1 – Item 1 – Warehouse /dock area: Employees load and unload palletized items from grocery trucks operating forklifts, during the night shift and illumination in the dock area and warehouse did not exceed the recommended minimum lighting levels of 10 foot-candles. (A.R.S. § 23-403(A)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

### SERIOUS - Citation 1 - Item 2 -

- a) Freezer: The floor in the freezer storage area was not kept dry and free of ice. (1910.22(a)(2)).
- b) Warehouse overhead storage: One overhead storage area, approximately 10 feet wide by 30 feet long and 7 feet high, did not have a standard guardrail system installed to prevent a fall to the floor. (1910.23(c)(1)). There was one other instance of this violation. Div. Proposal \$750.00

  Formula Amt. \$750.00

SERIOUS – Citation 1 - Item 3 –

- a) Warehouse, North Wall: One exit door was not unlocked, as a door bolt was in the locked position with an additional dead bolt locks were inserted making the door inoperable. (1910.36(d)(1)). There was one other instance of this violation.
- b) Warehouse, North Wall: One exit door was not free from obstruction, as it was blocked by palletized items. (1910.37(a)(3)). There was one other instance of this violation. Div. Proposal \$750.00

  Formula Amt. \$750.00

Citation 1 - Item 4 - Warehouse: Two employees were not trained in the safe operation of a Nissan, sit-down rider forklift, Model number ES, Serial number 21908, which was being used to load and unload palletized materials and equipment from delivery trucks. (1910.178(l)(1)(i)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

#### Citation 1 - Item 5 -

- a) Warehouse: One Nissan forklift, model ES, serial number C21908, was not taken out of service although the emergency brakes of the forklift were not in safe working order. (1910.178(p)(1)). There was one other instance of this violation.
- b) Warehouse: One Nissan forklift, model ES, serial number C21908, was not inspected prior to each shift. (1910.178(q)(7)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

TOTAL PENALTY - \$4,500.00

TOTAL FORMULA AMT. - \$4,500.00

Mr. Warren summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. Mr. Parker commented on night-time photos and noted that film does not adjust to light like the human eye does and dark areas will look much darker than they will be perceived and light areas will be much brighter than they will be perceived in person. Mr. Parker complimented ADOSH on the measurement techniques. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$4,500.00 on motion of Ms. Strickler, second of Mr. Sanders.

## Announcements and Scheduling of Future Meetings.

Ms. McGrory stated that the packet for today's meeting contained material related to recordkeeping and reporting rulemaking and this topic will be placed on the agenda for next week. She noted that staff will include the materials in the packet for next week's meeting.

Ms. McGrory also commented on a change in the presentation of information related to lump sum commutations.

Ms. McGrory also announced that the tax and assessments will be on next week's agenda as well as the setting of the Arizona State Minimum Wage. She identified staff that would be available to answer questions on these topics.

Ms. Dimas confirmed the Commission dates through November and there were no changes. Ms. Strickler will appear by telephone on November 20<sup>th</sup>. Mr. Parker set the meeting dates for December as 4<sup>th</sup>, 11<sup>th</sup>, and 18<sup>th</sup>, as long as they work for Commissioner Hennelly.

There being no further business to come before the Commission and no public comment, the meeting was adjourned at 1:30 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

Ву

Laura L. McGrory, Director

ATTEST:

Kara Dimas, Commission Secretary